

OFFICE OF MANAGEMENT AND BUDGET  
ROUTE SLIP

FROM A. Stone/H. Schreiber DATE 7-22-76

Per our conversation.

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July 19, 1976

Dear Mr. Speaker:

One of the foremost objectives of my Administration has been to restore public faith and trust in the integrity of all three branches of our government, the executive, the legislative and the judicial. Much progress has been made, but we must take additional steps to insure that public concerns are fully satisfied.

The Senate now has before it a bill, S. 495, which could serve these important objectives. However, as drafted, S. 495 contains serious Constitutional and practical problems, and it is so narrowly drawn that it does not fairly and adequately meet the objectives of such legislation.

I am writing to you today to propose a substitute to S. 495 that would correct the Constitutional deficiencies in the bill and would also expand its scope so that it would apply in equal force to the President, the Vice President, major appointees of the Federal government, and members of the Congress of the United States. I believe this new bill represents a sound, constructive approach and I would urge its adoption by the Congress.

In its current form, S. 495 provides for the appointment of temporary special prosecutors to deal with allegations of wrongdoing by key members of the government. The proposed legislation also would establish the Office of Congressional Legal Counsel to represent Congress before the Courts, and it provides for public financial disclosure by high level personnel in the government.

While I strongly support the principles underlying this legislation, I am especially concerned about three particular aspects of the bill in its present form:

- Title I, which provides for a series of different independent and special prosecutors for separate cases of alleged wrongdoing, is of highly questionable constitutionality because it would invest in the judiciary the power to review the role of the Attorney General in conducting prosecutions and the power to appoint special prosecutors not subject to Executive direction. To grant the judiciary such authority is contrary to the fundamental principles of separation of powers. Moreover, S. 495 requires the appointment of a different special prosecutor for each case, all on an ad hoc basis. The Department of Justice estimates that if S. 495 were now law, approximately half a dozen special prosecutors would have to be appointed, and close to 50 other matters possibly requiring appointment would be under advisement by a special court. This extraordinary result of the present bill would almost certainly produce inconsistency and inequity of prosecutorial action. I must also point out that Title I would not require direct referral to a special prosecutor of allegations of wrongdoing by most members of Congress, while it would require referral for all high level officers of the executive branch. I do not believe that such difference in treatment should be allowed to exist if public confidence in the government is to be maintained.
- Title II attempts to preempt certain law enforcement powers accorded to the President by the Constitution and vest them in the Congress.

- Title III, requiring financial disclosure by numerous government officers and employees, allows certain loopholes in reporting procedures, and has certain other deficiencies.

To remedy these defects, while advancing the principles of accountability by officers and employees in all three branches of the Federal government, I am transmitting today a substitute for S. 495. I urge the Senate to consider my modifications in proposals at the same time it considers S. 495. I also urge the House Judiciary Committee to consider my proposal at the time of its initial hearings on this matter later this week.

The highlights of my proposed legislation to maintain the public's confidence in the integrity of our government are as follows:

Title I -- Reorganization of the Department of Justice

To avoid the problems in Title I, my legislative proposal would establish a permanent Office of Special Prosecutor to investigate and prosecute criminal wrongdoing committed by high level government officials. The Special Prosecutor would be appointed by the President, by and with the advice and consent of the Senate, for a single three-year term. Individuals who hold a high level position of trust and responsibility on the personal campaign staff of, or in an organization or political party working on behalf of a candidate for any elective Federal office would be ineligible for appointment. The bill would sanction removal of the Special Prosecutor only for extraordinary improprieties and in the event of removal, the President would be required to submit to the Committees on the Judiciary a report describing with particularity the grounds for such action.

Any allegation of criminal wrongdoing concerning the President, Vice President, members of Congress, or persons compensated at the rate of Level I or II of the Executive Schedule would be referred directly to the Special Prosecutor for investigation and, if warranted, prosecution. The Attorney General could

refer to the Special Prosecutor any other allegation involving a violation of criminal law whenever he found that it was in the best interest of the administration of justice. The Special Prosecutor could, however, decline to accept the referral of any allegation. In that event, the allegation would be investigated by the Department of Justice.

The Special Prosecutor would have plenary authority to investigate and prosecute matters within his jurisdiction, including the authority to appeal adverse judicial rulings. However, in the event of a disagreement with the Special Prosecutor on an issue of law, the Attorney General would be free to present his position to the court before which the prosecution or appeal is lodged.

My proposal would also institutionalize, by statute, the investigation and prosecution of violations of law by government officials and employees which do not fall within the jurisdiction of the Special Prosecutor. Title I would also establish by statute a Section on Government Crimes and an Office of Professional Responsibility within the Department of Justice.

#### Title II -- Congressional Legal Counsel

I have also proposed a revised Title II that creates an Office of Congressional Legal Counsel and assigns the powers and duties of that Office. Like S. 495, this proposal gives Congress the legal assistance necessary to the proper discharge of its functions, but it does so in a manner consistent with the Constitution of the United States. Under my proposal, when the Attorney General certifies that he cannot represent Congress or a congressional entity, Congress or the appropriate house of Congress may direct the Congressional Legal Counsel to defend any legal action, enforce subpoenas, bring described civil actions, intervene in cases or appear as amicus curiae to defend the constitutionality of any law of the United States or the powers and responsibilities of Congress. Congressional Legal Counsel may request grants of immunity under the Organized Crime Control Act of 1970.

In all of these matters, my proposal like S. 495, provides for exclusive congressional control and direction of the activities of the Congressional Legal Counsel.

Title III -- Government Personnel; Financial Disclosure Requirements

My proposed bill recognizes and protects the public's right to be assured that public officials, regardless of which branch of government they serve in, disclose personal financial matters which could give rise to a conflict of interest in the performance of their official duties.

My proposal would require Federal public officers and employees to file financial reports with a designated office in their branch of government. In addition, public disclosure would be made of the financial statements of (i) all elected officials, (ii) high ranking officers or employees appointed by such officials, (iii) significant policy making and confidential employees, and (iv) other employees compensated at the rate of GS 16 or above (but not those in competitive civil service or who, save for certain legal exemptions, would be in the competitive civil service). My proposed legislation would also give the Comptroller General oversight authority to audit such statements as well as the authority to make findings of a conflict of interest and if the problem is not corrected, to make those findings public. Thus, the public's right to have accountability from public officers and employees is doubly protected: first, by the executive, legislative or judicial branch office with which reports are filed, and secondly, by the Comptroller General.

In addition, my proposal would close certain loopholes contained in the current Senate bill. For example, the present proposal requires the reporting of any item received in kind whose fair market value "for such item" exceeds \$500. Such provision would allow

a series of gifts from the same source, each valued at less than \$500 to go unreported. Under my proposed legislation such gifts would be aggregated and hence require reporting. Moreover, my proposal would make clear that while property owned for personal use, such as the family home, furniture, jewelry, the family car, etc., need not be inventoried in disclosure forms, property of a business or investment nature must be reported. Assets unknown to the individual because they are held in a bona fide "blind trust" need not be identified, but the trust interest must be disclosed.

I believe these provisions better serve the public interest than those contained in S. 495. Therefore, I urge the Congress to give prompt and favorable consideration to my proposal.

Sincerely,

The Honorable  
The Speaker  
U.S. House of Representatives  
Washington, D.C. 20515

TITLE III - GOVERNMENT PERSONNEL;  
FINANCIAL DISCLOSURE REQUIREMENTS

Definitions

Sec. 301. As used in this title --

(1) the term "agency" means each authority of the Government of the United States;

(2) the term "commodity future" means commodity future as defined in sections 2 and 5 of the Commodity Exchange Act, as amended (7 U.S.C. 2 and 5);

(3) the term "Comptroller General" means the Comptroller General of the United States;

(4) the term "dependent" means dependent as defined in section 152 of the Internal Revenue Code of 1954;

(5) the term "employee" includes any employee designated under section 2105 of title 5, United States Code, and any employee of the United States Postal Service or of the Postal Rate Commission;

(6) the term "immediate family" means -- (A) the spouse of an individual, (B) the child, parent, grandparent, grandchild, brother, or sister of an individual or of the spouse of such individual, and (C) the spouse of any individual designated in clause (B);

(7) the term "income" means gross income as defined in section 61 of the Internal Revenue Code of 1954;

(8) the term "Member of Congress" means a Senator, a Representative, a Resident Commissioner, or a Delegate;

(9) the term "officer" includes any officer designated under section 2104 of title 5, United States Code, any elected or appointed officer of the Congress or of either House of Congress, and any officer of the United States Postal Service or of the Postal Rate Commission;

(10) the term "security" means security as defined in section 2 of the Securities Act of 1933, as amended

(15 U.S.C. 77b);



(11) the term "transactions in securities and commodities" means any acquisition, transfer, or other disposition involving any security or commodity;

(12) the term "uniformed services" means any of the armed forces, the commissioned corps of the Public Health Service, or the commissioned corps of the National Oceanic and Atmospheric Administration;

(13) the term "political contribution" means a contribution as defined in section 301 of the Federal Election Campaign Act of 1971 (2 U.S.C. 431); and

(14) the term "expenditure" means an expenditure as defined in section 301 of the Federal Election Campaign Act of 1971 (2 U.S.C. 431).

#### Individuals Required to File Report

Sec. 302. (a) Any individual who is or was an officer or employee designated under subsection (b) shall file each calendar year a report containing a full and complete financial statement for the preceding calendar year if such individual has occupied the office or position for a period in excess of ninety days in such calendar year.

(b) The officers and employees referred to in subsection are --

- (1) the President;
- (2) the Vice President;
- (3) each Member of Congress;
- (4) each justice or judge of the United States;
- (5) each officer or employee of the United States who is compensated at a rate equal to or in excess of the minimum rate prescribed for employees holding the grade of GS-16 under section 5332(a) of title 5, United States Code; and
- (6) each member of a uniformed service who is compensated at a rate equal to or in excess of the monthly rate of pay prescribed for grade O-6, as adjusted under section 1009 of title 37, United States Code.

(c) Any individual who seeks nomination for election, or election, to the Office of President, Vice President, or Member of Congress shall file in any year in which such individual has --

(1) taken the action necessary under the law of a State to qualify for nomination for election, or election, or

(2) received political contributions or made expenditures, or has given consent for any other person to receive political contributions or make expenditures, with a view to bringing about such individual's nomination for election or election, to such office,

a report containing a full and complete financial statement for the preceding calendar year.

#### Contents of Reports

Sec. 303. (a) Each individual shall include in each report required to be filed by him under section 302 a full and complete statement, in such manner and form as the Comptroller General may prescribe, with respect to --

(1) the amount and source of each item of income, each item of reimbursement for any expenditure, and each gift or aggregate of gifts from one source (other than gifts received from any member of his immediate family) received during the preceding calendar year which exceeds \$100 in amount or value, including any fee or other honorarium received for or in connection with the preparation or delivery of any speech, attendance at any convention or other assembly of individuals, or the preparation of any article or other composition for publication;

(2) the fair market value and source of any item received in kind or aggregate of such items received from one source (other than items received in kind from any member of his immediate family), including, but not limited to, any transportation or entertainment received, during the preceding calendar year if such fair market value for such item exceeds \$500;

(3) the identity and the category of value, as designated under subsection (b), of each asset known to him, held during the preceding calendar year for business or investment purposes and which has a value in excess of \$1,000 as of the close of the preceding calendar year;

(4) the identity and the category of amount, as designated under subsection (b), of each liability owed which is in excess of \$1,000 as of the close of the preceding calendar year;

(5) the identity, the category of amount, as designated under subsection (b), and date of any transaction in securities of any business entity or any transaction in commodities futures during the preceding calendar year which is in excess of \$1,000;

(6) the identity and the category of value, as designated under subsection (b), of any purchase or sale of real property or any interest in any real property which was held for business or investment purposes during the preceding calendar year if the value of property involved in such purchase or sale exceeds \$1,000;

(7) any patent right or any interest in any patent right, and the nature of such patent right, held during the preceding calendar year; and

(8) a description of, the parties to, and the terms of any contract, promise, or other agreement between such individual and any person with respect to his employment after such individual ceases to occupy his office or position with the Government, including any agreement under which such individual is taking a leave or absence from an office or position outside of the Government in order to occupy an office or position of the Government, and a description of and the parties with any unfunded pension agreement between such individual and any employer other than the Government.

of section 302(b) shall also include in such report the identity of any person, other than the Government, who paid such individual compensation in excess of \$5,000 in any of the five years prior to the preceding calendar year and the nature and term of the services such individual performed for such person. The preceding sentence shall not require any individual to include in such report any information which is considered confidential as a result of a privileged relationship, established by law, between such individual and any person nor shall it require an individual to report any information with respect to any person for whom services were provided by any firm or association of which such individual was a member, partner, or employee unless such individual was directly involved in the provision of such services.

(b)(1) For purposes of paragraphs (3) through (6) of subsection (a), an individual need not specify the actual amount or value of each asset, each liability, each transaction in securities of any business entity or in commodities futures, or each purchase or sale required to be reported under such paragraphs, but such individual shall indicate which of the following categories such amount or value is within --

- (A) not more than \$5,000,
- (B) greater than \$5,000 but not more than \$15,000,
- (C) greater than \$15,000 but not more than \$50,000, or
- (D) greater than \$50,000.

(2) Each individual shall report the actual amount or value of any other item required to be reported under this section.

(c) For purposes of paragraphs (1) through (7) of subsection (a), an individual shall include each item of income or reimbursement and each gift received, each item received in kind, each asset held, each liability owed, each transaction in commodities futures and in securities, each purchase or sale of real property or interest in any real property, and each patent right or interest in any real property, and each patent right or interest in any patent right held by him, his spouse, or any of his dependents, or by him and his spouse jointly, him and any of his dependents jointly, or his spouse and any of his dependents jointly, or by any person acting on his behalf.

Sec. 304. (a)(1) Not later than May 15 of each year, reports will be filed as follows: officers and employees of the Executive Branch, other than an individual excepted under paragraph (3) of this subsection, shall file their reports with the Chairman of the Civil Service Commission; Justices, judges, officers and employees of any Court of the United States shall file their reports with the Director of the Administrative Office of the United States Courts; members, officers and employees of the Legislative Branch shall file their reports with the Secretary of the Senate or the Clerk of the House of Representatives, respectively. The Comptroller General shall have access to such reports for the purpose of carrying out this title.

(2) Each such individual, other than the President, Vice President, a Member of Congress, a justice or judge of the United States, any officer or employee of the Senate or the House of Representatives or any court of the United States, the head of each agency, each Presidential appointee in the Executive Office of the President who is not subordinate to the head of an agency in the Executive Office, or each full-time member of a committee, board, or commission appointed by the President, shall file a copy of such report with the head of the agency in which such individual occupies any office or position at the same time as such report is filed pursuant to paragraph (1).

(3) The President may exempt <sup>from the reporting requirements of this subsection</sup> any individual <sup>or category of individuals</sup> in the Central Intelligence Agency, the Defense Intelligence Agency, or the National Security Agency, or any individual <sup>or category of individuals</sup> engaged in intelligence activities in any agency of the United States from the requirement to file a report with the Civil Service Commission if the President finds that, due to the nature of the office or position occupied by such individual, public disclosure of such report would reveal the identity of an undercover agent of the Federal Government. <sup>or category of individuals</sup> Each individual <sup>or category of individuals</sup> exempted by the President from such requirements shall file such report with the head of the agency in which he occupies an office or position.

(b) (1) Each individual who seeks nomination for election, or election, to the office of President or Vice President and is required to file a report under section 302(c) shall file such report with the Chairman of the Federal Election Commission within one month after the earliest of either action which such individual takes under section 302(c)(1) or (2).

(2) Each individual who seeks nomination for election, or election, to the Office of Member of Congress and is required to file a report under section 302(c) shall file such report with the Clerk of the House or the Secretary of the Senate within one month after the earliest of either action which such individual takes under section 302(c)(1) or (2).

(c) (1) Any individual who ceases prior to May 15 of any calendar year to occupy the office or position the occupancy of which imposes upon him the reporting requirement contained in section 302(a) shall file such report for the preceding calendar year and the period of such calendar year for which he occupies such office or position on or before May 15 of such calendar year.

(2) Any individual who ceases to occupy such office or position after May 15 of any calendar year shall file such report for the period of such calendar year which he occupies such office or position on the last day he occupies such office or position.

(d) Persons with whom reports are to be filed may grant one or more reasonable extensions of time for filing any report but the total of such extensions in any case shall not exceed ninety days.

Failure to File or Falsifying Reports;Procedure

Sec. 305. (a) (1) Any individual who willfully fails to file a report as required under section 302, or who knowingly and willfully falsifies or fails to report any information such individual is required to report under section 303, shall be fined in any amount not exceeding \$10,000, or imprisoned for not more than one year, or both.

(2) The Attorney General may bring a civil action in any district court of the United States against any individual who fails to file a report which such individual is required to file under section 302 or who fails to report any information which such individual is required to report under section 303. The court in which such action is brought may assess against such individual a penalty in any amount not to exceed \$5,000.

(b) The head of each agency, the Clerk of the House of Representatives with respect to any Member, officer, or employee of the House of Representatives, the Secretary of the Senate with respect to any Member, officer or employee of the Senate, and the Director of the Administrative Office of the United States Courts with respect to any justice, judge, officer, or employee of any court of the United States shall submit annually to the Comptroller General a complete list of individuals who are required to file a report under section 302 and shall submit at the close of each calendar quarter a list of individuals who have begun or have terminated employment with such agency, the House of Representative the Senate, or any court in such calendar quarter.

(c) The Comptroller General or the person with whom a report is required to be filed pursuant to this title shall refer to the Attorney General the name of any individual which

he has reasonable cause to believe has failed to file a report or has falsified or failed to file information required to be reported. In addition, if such individual is a Member, officer, or employee of the Senate or the House of Representatives, the Comptroller General shall refer the name of such individual to the Senate Select Committee on Standards and Conduct or the Committee on Standards of Official Conduct of the House of Representatives, whichever is appropriate.

(d) The President, the Vice President, either House of Congress, the Director of the Administrative Office of the United States Courts, the head of each agency or the Civil Service Commission may take any appropriate personnel or other action against any individual failing to file a report or information or falsifying information.

Custody and Audit of, and Public Access to, Reports

Sec. 306.(a)(1) Except as provided in (2), the person with whom a report is required to be filed shall make such report available for public inspection within fifteen days after the receipt thereof and shall provide a copy of such report to any person upon a written request.

(2) The foregoing paragraph shall not apply to individuals in the competitive service, individuals in Schedules A and B of the excepted service, or other individuals who are determined by the Civil Service Commission to be in career positions.

(b) Any person requesting a copy of a report under subsection (a) (1) shall supply his name and address and the name of the person or organization, if any, on whose behalf he is requesting such copy and may be required to pay a reasonable fee in an amount necessary to recover the cost of reproduction or mailing of such report excluding any salary of any employee involved in such reproduction or mailing.



(c) (1) It shall be unlawful for any person to inspect or obtain a copy of any report --

- (A) for any unlawful purpose;
- (B) for any commercial purpose;
- (C) to determine or establish the credit rating of any individual;
- (D) to compile any mailing list, or
- (E) for use directly or indirectly in the solicitation of money for any political, charitable or other purpose.

(2) The Attorney General may bring a civil action in any district court of the United States against any person who inspects or obtains such report for any purpose prohibited in paragraph (1). The court in which such action is brought may assess against such individual a penalty in any amount not to exceed \$1,000.

(d) Reports shall be held and made available to the public for a period of five years after receipt. After such five-year period, the reports shall be destroyed.

(e) (1) The House of Representatives, the Senate, the Director of the Administrative Office of the United States Courts, the Chairman of the Civil Service Commission, and the head of each agency shall make provisions to assure that each report shall be reviewed in accordance with any law or regulation with respect to conflicts of interest or confidential financial information of officers or employees of the House of Representatives, the Senate, the United States courts or each such agency or in accordance with rules and regulations as may be prescribed.

(2) Notwithstanding any law or resolution, whenever in any criminal case pending in any competent court in which a Member, officer, or employee of the Senate is a defendant, or

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in any proceeding before a grand jury of any competent court in which alleged criminal conduct of a Member, officer, or employee of the Senate is under investigation, a subpoena is served upon the Secretary of the Senate directing him to appear and produce any reports filed pursuant to any financial disclosure requirement, then he shall --

(i) if such report is in a sealed envelope, unseal the envelope containing such report and have an authenticated copy made of such report, replace such report in such envelope and reseal it, and note on such envelope that it was opened pursuant to this paragraph in response to a subpoena, a copy of which shall be attached to such envelope, and

(ii) appear in response to such subpoena and produce the authenticated copy so made.

For purposes of this paragraph, the term "competent court" means a court of the United States, a State, or the District of Columbia which has general jurisdiction to hear cases involving criminal offenses against the United States, such State, or the District of Columbia, as the case may be.

(f)(1) The Comptroller General shall, under such regulations as he may prescribe, conduct on a random basis audits of not more than 5 per centum of the reports filed under section 304(a)(1).

(2) The Comptroller General shall audit during each term of an individual holding the office of President or Vice President at least one report filed by such individual under section 304(a)(1) during such term.

(3) The Comptroller General shall, during each six-year period beginning after the date of enactment of this Act, audit at least one report filed by each Member of the Senate and the House of Representatives during such six-year period.

(4) (A) In conducting an audit under paragraph (1), (2), or (3), the Comptroller General is authorized to require by subpoena the production of books, papers, and other documents. All such subpoenas shall be issued and signed by the Comptroller General.

(B) In case of a refusal to comply with a subpoena issued under subparagraph (A) --

(i) the Comptroller General is authorized to seek an order by any district court of the United States having jurisdiction of the defendant to require the production of the documents involved; and

(ii) such district court may issue such order and enforce it by contempt proceedings.

(5) Whenever the Comptroller General finds that a report filed under Section 304(a) (1) discloses the existence of a conflict of interest or a potential conflict of interest, he shall report his finding to the person with whom such report has been filed with a copy to the individual who filed such report. In the event an issue raised by such a report is not resolved to the satisfaction of the Comptroller General, he may, after the lapse of 90 days from the date of his report, make public the report filed under Section 304(a) (1), together with his finding and all comments made or actions taken in respect of his finding.

#### Separability

Sec. 307. If any part of this title is held invalid, the remainder of the title shall not be affected thereby. If any provision of any part of this title, or the application thereof to any person or circumstance, is held invalid, the provisions of other parts and their application to other persons or circumstances shall not be affected thereby.